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## **Muslim Women and Gender Based Violence in India and the UK**

### **Abstract**

This paper examines how the marginality of Muslim communities in India and the UK intersects with gender based violence (GBV) in Muslim communities. We briefly outline the socio-economic positioning of Muslims in both contexts and then move on to i) discuss communalism in India and radicalisation in the UK and ii) consider personal laws in India and the call to Sharia law in the UK to elucidate the ways in which these wider policies, legislation and discourses impact on Muslim women experiencing GBV in both contexts. We conclude that there is a continuum between state responses and community responses, and personal and criminal law in entrenching GBV at a structural and interpersonal level in both India and the UK and that the current socio-political context further limits public spaces available to Muslim women to access support for GBV.

Key words: communalism, personal laws, radicalisation, Sharia law, gender-based violence

This paper explores and analyses the differences and similarities in Muslim women's experiences of gender based violence (GBV) in India and in the UK, using discussion on communalism<sup>i</sup>, radicalisation and personal law as tropes through which to explore GBV in both contexts. We discuss how structural factors impact on specific difficulties in relation to GBV, in part related to the minoritised status of Muslim communities in both contexts, where rhetoric and policy about Muslim communities is focussed on integration and terrorism. Based on secondary data and documentary analysis, the paper adds to the wider conceptual debates on this issue.

We have chosen to address these issues in the context of India and the UK for three reasons. Firstly, for demographic reasons: in both countries, Muslims form the largest religious minority. Secondly, in both contexts, there have been concerns about the allegiance of Muslim communities to the state. Finally, in both contexts, Muslim communities have been subjected to systematic discrimination, and abuse as illustrated below. We argue that the last two points have particular implications for Muslim women's experiences of GBV in these two countries. We begin by briefly outlining the socio-economic and political positioning of Muslims in both countries and then move on to i) discuss communalism in India and radicalisation in the UK and ii) consider personal laws in India and the call to Sharia law in the UK to elucidate the ways in which these processes: structural, political, economic and religious impact on Muslim women experiencing GBV in both contexts.

### **Socio-economic and political positioning of Muslim communities: India and the UK**

Reports on the social and economic status of Muslims in India are mixed. Some indicate that in some areas, including access to education, employment and the public space, region matters more than religion in India. Hence, North Indian women irrespective of their religion, fare

worse than South Indian women (Sen, 2001). However, other studies suggest that Muslims have lower access to bank credit, are poorer compared to other groups (particularly in urban areas) and Muslim women have lower rates of economic activity compared to other Indian women. Unemployment rates among Muslim graduates are the highest compared with all religious groups. In rural areas, villages with a lower Muslim population have better infrastructure, medical and educational facilities compared to villages which are largely Muslim (Sachar report, 2006). Muslim women's experiences of GBV in India are complicated by their religious identity, Hindu fundamentalism and anti-Muslim communalism, exacerbated by the rise of Muslim fundamentalism particularly since the 1990s, anti-Muslim communal riots, and the projection of the Muslim community as 'anti national' and extremist/terrorist. (Gangoli, 2007; Vatuk, 2008). The successes of the Hindu right wing Bharitya Janata Party (BJP), manifested in Narendra Modi becoming Prime Minister in 2014, has further led to a sense of fear and isolation amongst Indian Muslims (Rawlett, 2015).

In England and Wales, Muslims are the second largest religious group, with 4.8% (or 2.7 million) people identifying as Muslim (Office National Statistics (ONS) 2012). Muslims largely live in some of the most deprived boroughs and regions in England and have the highest rates of economic inactivity and unemployment. However, the younger age profile of Muslims is a factor in economic inactivity as 24% reported being students; 34% of economically inactive Muslim people reported 'looking after home and family' (ONS 2013). While this may indicate different religious and cultural expectations of adulthood, this economic inactivity may also be attributable to employers' recruitment practices and workplace cultures. Even for those in employment, Pakistani, Bangladeshi and Black people are paid less than white British people or Indians with the same qualifications, thus making it harder for these groups to escape poverty (JRF, 2011). The JRF report also points to the important role of social networks and social

capital in gaining employment and promotion which marginalized groups have lesser access to. Wood et al. (2009) illustrate that discrimination still operates in recruitment and an earlier study (EOC 2007) highlights how workplace culture creates barriers for minority ethnic recruitment and retention, particularly for Pakistani, Bangladeshi and Black Caribbean women. Rather than reading the high levels of economic inactivity of Muslim women, as solely a cultural preference for the domestic sphere, it is important to remain cognisant of how these discriminatory forces operate for different ethnic groups, especially those who are Muslim. Muslims are more ethnically diverse compared to other religious groups, however, 68% of Muslims are from a South Asian background.

Muslims in both India and England and Wales occupy marginal and disadvantaged positions. While the two settings are very different, analyzing different mechanisms of minoritisation in the two contexts yield some surprisingly similar challenges in responding to GBV experienced by Muslim women. We examine how GBV in both locations is articulated in the area of personal laws and how this is shaped by two factors, specifically of communalism in India and the perceived radicalization of Muslim communities in the UK. Within this context, we argue that there is a continuum between state responses and community responses, and personal and criminal law in entrenching GBV both at a structural and interpersonal level in both India and the UK.

### **The context: Communalism in India and perceived radicalization of Muslim communities in the UK**

This section discusses the importance of the context in shaping public and policy perceptions about Muslims in India and the UK, as these wider considerations help elucidate the particular

challenges for Muslim women experiencing GBV. We have already demonstrated the economic marginalisation faced by Muslim communities in India and in England and Wales and here we discuss communalism in India in the current political landscape and the perceived radicalization of Muslim communities in the UK to draw out the implications for Muslim women experiencing GBV.

### *Communalisation in India and impact on GBV*

The rise of communalisation, as reflected in Hindutva (Hindu fundamentalism) in post-colonial India, has its origins in the ‘divide and rule’ policy implemented under colonial rule which contributed to the partition of India and Pakistan in 1947, that accompanied independence from Britain (Sarkar 1985; Kakar 1995). Prior to independence, Hindu fundamentalism was represented by the Rashtriya Seva Sangh (henceforth RSS), founded in 1925, and the political party, BJP. The RSS continues to see itself as ‘the antidote to...the dangerous tendencies of modern-day tendencies’ (Narula 2003:44), including secularism.

Despite India’s post-independence secular constitution, the newly created Indian State simultaneously witnessed communal riots and widespread carnage against Muslims, leading to loss of life, and a sense of insecurity for the Muslim community. Feminists have argued that religious fundamentalism in India reflects the crisis of both modernisation and of democracy, with serious implications for women’s rights. It has been argued that ‘fundamentalism...refashions patriarchies to legitimise participation of women in the nationalist project’ (FAOW 2005:3), within which Hindu women are seen as the norm and Muslim women as the ‘other’.

During the post-partition riots in 1947-48, women from different religious communities, including Muslim women, were targeted for sexual assault, with the bodies of women being constructed as a repository of the honour of the community (Menon and Bhasin 1998; Butalia 2000). This is a recurrent theme in subsequent communal unrest, including the 2002 Gujarat riots, where Muslim women's bodies were targeted sexually during communal riots by Hindu fundamentalist forces. Additionally, Muslims experience structural discrimination, leading to economic, educational and social marginalisation (International Initiative for Justice in Gujarat 2003). The loyalty and patriotism of the Muslim community has also been constructed as suspect, and projected as owing allegiance to Pakistan, rather than India, and Muslims regarded as being complicit in acts of terrorism against the State. While this can be regarded as a legacy of the colonial divide and rule policy, and the pain of partition (Kakar, 1995), the continuing uneasy relationship between India and Pakistan, and the global rhetoric of 'Islamic terrorism' has exacerbated what Bharucha (2004) calls the 'othering' of Muslims in India, and especially accusations of radicalisation among Muslim men. Such developments also need to be understood in the context of the spread of neoliberal globalisation in India. In contrast to the RSS, the BJP, while holding allegiance to Hindutva philosophies, projects itself as being aligned to the vision of India as modern and part of the liberalised, globalised world (Lakha, 2003).

Currently, the BJP is the ruling party in India, and the Prime Minister Narendra Modi is seen simultaneously to represent a globalised, liberal and westernised society, whilst also supporting the rights of the Hindu community. This is manifested in policies such as the beef ban, the murder of Muslims who are suspected of eating beef and calls for a uniform civil code (Rawland, 2015). The BJP has constructed Muslim men both as 'backward' for not educating 'their' women and forcing them to veil and as sexual predators, rapacious towards Hindu

majority women. After the 2014 national elections, the rhetoric of ‘love jihad’ has been used to characterise relationships between Muslim men and Hindu women (<http://www.modifacts.org/gender/>), with the implication that Muslim men enter such relationships to marry and convert Hindu women to Islam. This reinforces a view of Hindu women as the property of men and as lacking individual agency, while demonising Muslim men. Further, the issue is couched in the language of Hindu women’s honour being violated by Muslim men.

In contrast to these populist discourses, academic discourses on communalism and radicalisation in India fail to address the issue of gender itself, let alone GBV. Much of the writing on communalism articulates radicalisation in (unconsciously) male terms (Pandey, 1993; Kakar, 1994; Bharucha, 2004). Some feminists have focussed on sexual violence against Muslim women in communal riots (Menon 1998; Butalia 2000; International Initiative for Justice in Gujarat 2003), but there has been little research on domestic and sexual violence within the Muslim community. This may well be due to very valid fears of perpetuating communal stereotypes of violent Muslim men and passive Muslim women. However, this position does not necessarily offer protection to Muslim women experiencing GBV.

#### *Perceived Radicalization of Muslim communities, Muslim women and GBV in the UK*

Post 9/11, the UK government is increasingly concerned with the perceived radicalization within Muslim communities. This radicalization can be understood through key turning points which shift the relational, material and discursive frameworks between Muslim communities and the majority community and the policy responses to Muslim communities. Significant recent shifts in the UK context include the Salman Rushdie affair in the late 1980s; the 9/11 and 7/7 bombings; the wars in Iraq and Afghanistan; and the current civil war in Syria. It is



beyond the scope of the paper to analyze each of these shifts individually but see Abbas (2007) and Kundani (2012) for a more in-depth exploration of the issues. To note, is that there are key debates in this policy field including a lack of clarity about what is meant by radicalization, the causes of it and hence the solutions. In offering a historicized account of Muslims in Britain, Abbas (2012) argues that there is a symbiotic relationship between radicalization and Islamophobia, which contributes to extremism. It has become increasingly acceptable to adopt an anti-multi-culturalism and anti-Muslim stance in the name of British values and culture and as a counter measure to terrorism as articulated by the then Prime Minister, David Cameron, who argued in 2011, that multi-culturalism had failed and pointed to extremism within Muslim communities as responsible for this failure (BBC News online, 2011). Within this logic, as argued by Lentin (2014), an excess of largesse and generosity towards minority ethnic communities is conceptualized as the problem, with such communities constructed as lacking a sense of identification with British values. This, in turn, contributes to a wider popular mistrust, suspicion and hostility towards minority communities and especially Muslims, lending support to the call for 'rights for whites'. Cherished British values, such as the freedom to practice one's religion, is thus compromised when policy and popular discourse positions itself as anti-Muslim. Importantly, the anti-multi-culturalism position fails to recognize that the integration it desires is a two way process and requires a stance against social injustice, poverty, discrimination and racism experienced by Muslims and other minorities. At a wider policy level, welfare cuts, rising racism, and cultural and religious intolerance are barriers to integration. It is only since October 2015 that official figures from the police to the Home Office contain statistics for Islamophobia (BBC news 13 Oct 2015). Current available statistics for both racist incidents and race hate crime show an increase since 2012 (Home Office, 2016) which is interpreted as due to better reporting processes by the police. Of note is the sharp increase in the number of racially or religiously aggravated offences recorded by the police in

July 2016 (post Brexit) which was 41% higher than that recorded in July 2015 (ibid). Tell MAMA, a non-governmental organisation that collects data on Islamophobia reveals a pattern of spikes in anti-Muslim incidents (both on and offline) following terrorist attacks in the West, such as Drummer Lee Rigby's murder and the Charlie Hebdo attack (Littler and Feldman, 2015). Significantly, off line attacks are mainly directed towards Muslim women visibly dressed as Muslims (ibid) and the gendered dimension of Islamophobia requires further research and monitoring. Within the anti-multi-culturalism framework, Lentin (2014) highlights that such political issues are occluded and instead framed as cultural/religious problems. This culturalised framing provides legitimacy to the privileging of British culture and the 'othering' of British Muslims. Concerns over 'home-grown' terrorism and policy responses to it have also led to the 'securitisation' of Muslims in the UK resulting in increased surveillance and intervention to prevent radicalization and extremism in Muslim communities (e.g. the CONTEST and PREVENT policy; Brown, 2006).

Post 9/11, 'hard' line UK government initiatives include numerous pieces of anti-terrorism legislation with new powers to stop-and search Muslim youth (and other Asians assumed to be Muslim), the widespread use of control orders, dawn raids on suspected terrorists and a general construction of Muslim communities as 'suspect' and would be terrorists (Coppock and McGovern, 2014; Hickman et al. 2012). The 'softer' line of the Prevent strategy (part of the wider CONTEST policy) is heavily contested and has been modified several times. Prevent utilises community initiatives to prevent young people from becoming radicalized and the role of women, particularly mothers, is seen as central to calming extremism within Muslim communities (DCLG 2007). In this essentialized construction, mothers are positioned as biological and cultural reproducers of communities, responsible for generating up-standing (UK) citizens and thus intrinsically implicated in nation building (Yuval-Davis, 1997).

Globally, notions of motherhood are frequently highly romanticized and essentialized, but often fail to take account of the specific contours of differently located mothering practices. Holloway et al's 2008 study on transitions to motherhood stress the many similarities between women as mothers (including Muslim women) and this is echoed in more recent work by Cheruvallil-Contractor (2016) on Muslim motherhood. She discusses the valorization of motherhood in Islamic foundational texts and highlights how Muslim women's contributions in the public realm are overlooked by more recent patriarchal constructions of Muslim motherhood. The Muslim mothers she interviewed are described as reclaiming the foundational texts through a feminist lens, thus challenging received wisdom about how Muslim motherhood is practiced. Brown (2006) discusses how the UK state deliberately uses gender, motherhood and Islam to act as a civilising influence on their brothers and sons to aid the state in counter terrorism. As Brown argues, the emancipation of Muslim women is thus constrained within these restricted and naturalized parameters of gender and motherhood rather than the wider project of gender equality. Fears around 'home-grown' terrorism heightens and amplifies the role of Muslim mothers and so when Muslim communities are criticized for failing to curb extremism, this is also a criticism of the mothering capacity of Muslim mothers. The discourse about the vulnerability of young Muslims (including children) to radicalization and extremism has taken an alarming turn and is now incorporated in safeguarding processes (Coppock & McGovern 2014). However, this focus is problematic as it tends to psychologise and culturalise a multi-faceted issue impacted by the wider structural location of Muslims and foreign policy decisions contributing to the alienation of Muslim youth (Kundani, 2012). This context of increased surveillance is considerably different for South Asian Muslim women compared to other South Asian communities and creates particular difficulties in relation to GBV, as discussed below.

In the UK, radicalisation within Muslim communities, the ‘war on terror’ and the state’s attempt to co-opt mothers to prevent radicalization form the context within which Muslim women both experience GBV and the policy and practice responses to their experiences of GBV. Additionally, immigration regulation, racialization of communities and policies aimed at living with the “other” has shaped policy and practice responses to violence against minority women. Thus responses to Muslim women’s experiences of GBV in the UK are inextricably linked to those of all minoritised women. The divergence in approach between Muslim women and other minority groups can only be observed from the late 1990s, particularly in state policy. Service responses up until this time were largely spear headed by secular South Asian women’s organisations, as part of the broader movement of violence against women, which sought to challenge racism and discrimination in mainstream policy and service responses and the invisibility of minority women within policies of multi-culturalism.

A significant shift occurred from the late 1990s, when practices such as forced marriage and honour based violence (HBV) constructed as a largely Muslim issue, began to receive greater policy attention and separated the experiences of Muslim women from others. The response to issues of forced marriage and HBV has generated much debate within policy making circles (e.g. on whether or not to criminalise forced marriage). The hyper-gaze on these issues has enabled the state to separate specific forms of violence seen to be the preserve of Muslim communities from wider violence against women concerns, thus reinforcing the view of Muslims as particularly violent and barbaric. This view is much critiqued by secular feminists who argue that such violence is integral to the operation of gender inequality within communities and thus cannot be viewed simply as a marker of culture and religion (Patel and Siddiqui, 2010). Hester et al. (2015) also indicate that the increased policy focus on forced marriage and HBV has reduced South Asian women’s experiences, particularly Muslim

women's experiences, of all violence to only these specific forms, thus further separating Muslim women from other minoritised women. Bates' work on honour-based abuse and forced marriage in England and Wales, profiling the nature and characteristics of abuse, found further evidence that GBV – particularly domestic violence and abuse in BME communities – is often read as 'honour based' by statutory and voluntary agencies, even where these experiences are closer to generic experiences of intimate partner violence that cuts across ethnicity (Bates, 2017). For us, the wider issue is how the term honour-based violence is interpreted and used by both perpetrators and support agencies to further reinforce the sense of separateness and victimisation, potentially leading to greater pressures on Muslim women to resolve issues within community mechanisms (Siddiqui, 2013).

The context within which debates about harmful practices occurred has been marked by a heightened critique and an abandonment of multiculturalism, seen to create segregation and breed terrorism, in favour of cohesion and neo-integrationist/assimilationist policies emphasising the adoption of core British values (Guru, 2010; Phillips, 2005; Patel and Siddiqui, 2010). Paradoxically, at the same time the government has promoted a faith based agenda, supporting the greater role of 'moderate' religious leaders and organisations in community affairs, thus replacing multi-culturalism with 'multi-faithism', which its critics view as a 'regressive development resulting in de-secularisation and the communalisation of minority groups' (Patel, 2013:41; Siddiqui 2013). These contradictory policy imperatives have utilised the issue of forced marriage in particular to implement tighter immigration controls in the name of protecting minority women and their rights. Hence, on the one hand, all forms of violence within South Asian communities, including Muslim, have been reduced to HBV reinforcing their exoticisation and separation from other women. On the other hand, women's autonomy is increasingly undermined as they come under greater pressure to use internal/ community

mechanisms to address problems of GBV, supported by the state through its acceptance of religious personal laws and the operation of Sharia Councils in dealing with family issues. As the “faith agenda” has gained currency in the UK, with increased funding for faith based community projects, women are left with limited choice about the type of services they can access for GBV, especially as secular women’s groups are increasingly unlikely to be funded. Thus, a greater recognition of forms of violence such as forced marriage and HBV is accompanied by the constriction of secular spaces for minority women (Patel and Siddiqui 2010).

#### *GBV and Muslim women in India*

Existing statistics suggest that Muslim women’s experiences of domestic violence are parallel to those of Hindu women, with higher levels of marital sexual violence, but similar levels of emotional violence. (NFHS-3, 2005-6). This is further complicated by findings that suggest that domestic violence is higher among poorer families, and we are aware of increasing impoverishment of Muslim communities (Sachar report, 2006). However, access to justice through the police in cases of GBV is adversely influenced by the nature and the degree of communalisation of society. For instance, Muslim women report that their access to relief in cases of domestic violence following communal riots has suffered due to the role played by the police in communal riots, where they have targeted Muslim men and been complicit in acts of sexual violence. Muslim women fear repercussions both from the police, their families and the wider community in making decisions to report domestic violence (IIJG, 2003; Gangoli, 2007).

Further, the impact of communalisation has, in some cases, strengthened misogynist views within Muslim communities. For instance, following communal riots in Gujarat in 2002, Muslim community leaders made speeches where they held the women of the community responsible for

the riots. Women were accused of lowering the prestige of the community by filing criminal cases against their husbands, by not wearing the *hijab* (head scarf) and not praying (Gangoli, 2007). This leads to increased pressure on minority women to conform to religious and community codes.

The situation is exacerbated by the lack of options for women fleeing GBV. While there is a paucity of research on post separation violence in India, Thiara and Gill's (2012) study on the experiences of BME women in the UK of post separation abuse found that it was a significant issue for the majority of women studied, even in cases where separation had taken place years before. The research also found that for South Asian women, the joint family system and pressures from extended families exacerbated these experiences. South Asian men often used other family members to pressurize women into returning, or forcing contact with children. In India, women continue to experience post separation abuse from partners and extended marital families, and this may be complicated by the absence of natal support and welfare provision. This makes it harder for women to consider leaving the abusive partner, and may also contribute to women returning to violent partners and their families.

While the situation for most poor and single women in India is dismal, for Muslim women on the verge of singlehood, things are far worse. There are structural (rather than cultural) reasons why Muslim women may continue to live with GBV. For instance, finding accommodation is a considerable problem in Mumbai and other metropolitan cities. Additional to the high costs of real estate, since communal riots in Mumbai in 1992-93 when Muslim families were targeted, several have relocated to "Muslim" dominated areas. This is because of fears of violence and because some Muslim families have found it difficult to rent or buy property in Hindu dominated housing societies and localities, leading to a virtual ghettoisation of Muslim communities in specific neighbourhoods designated as 'Muslim' areas. Community pressures in such situations make it

even more difficult for single Muslim women to find alternative accommodation. Given this, many women from Muslim communities are hesitant to approach police to file a case against their spouses, as this would potentially render them homeless. Research also indicates that Muslim women have complained of structural discrimination that contravenes constitutional provisions, such as denial of access in government hospitals, ration cards and admission in state run schools (Gangoli 2007; Solanki, 2011; Solanki and Gangoli, 2016).

Our analysis indicates that women experiencing violence in communities ‘under siege’ both in the UK and in India may be constrained by collective anxieties about likely responses should they approach agencies for help. There is also the possibility that in such situations, the requirement for loyalty and unity *within* communities makes approaching ‘outsiders’ more difficult. Thus, GBV remains within the family/community with limited options for accessing services. Whilst normative assumptions in the GBV field attest to the difficulties all women experience in leaving abusive relationships, the current socio-political context further limits public spaces available to Muslim women to access support.

### **Personal Laws in India, Sharia Law in the UK, Gender and Religious Rights**

The right to religious freedom is enshrined in international law, but the extent to which one can access this right is bound by the national laws of specific countries. In this section we discuss the issues arising from personal laws in India and the call for Sharia Law (a form of personal law) in the UK.

#### *Personal laws in India*



Women in India are governed by separate civil or ‘personal’ laws according to their religion in the areas of marriage, divorce, maintenance, custody, inheritance, adoption and succession, but unified domestic and sexual violence laws (both civil and criminal). Personal laws may appear as issues of gender and community inequality, as women of different communities have different rights in these areas. Hindu, Christian and Parsee personal marriage law does not sanction polygamous marriage, but such marriages are legal in Muslim personal law. Separate ‘personal’ laws have been conceptualised as a remnant of colonial jurisprudence. A policy of non-interference with ‘personal customs’ led to codification of Hindu, Christian, Parsee and Muslim Personal Laws, based on detailed discussions and consultations with representatives of religious bodies prior to independence in 1947 (Singh 1993; Kishwar 1994). Hindu Personal Law was recodified after independence in the 1950s; other personal laws were not (Kishwar 1994).

The purpose of codification in the colonial period was not to create just gender laws for women, but to prevent religious communities from being governed by customary laws. Codification of Muslim law took place before independence: the Shariat Act, 1937, and the Dissolution of Muslim Marriages Act, 1939. At the time, these were presented as progressive, giving Muslim women rights denied to them under ‘customary law’ (Arif, 1994). The Shariat Act brought all Indian Muslims under the Shariat laws in matters related to inheritance, divorce, marriage and guardianship. The 1939 Act extended to all Muslim women rights of divorce that had so far been restricted to Hanafi Muslims (Singh 1993).

The recodification of Hindu law in the 1950s introduced some aspects of gender equality, and have since been presented in Indian politics as model laws (c.f. Sangari 1995, 3788-9). For instance, equal rights to divorce, monogamous marriage, and some rights over property were

introduced. In contrast, the Shariat Act, 1937 contains several discriminatory aspects, for instance, Muslim men have the right to commit polygamy, and to initiate unilateral divorce. The fear of unilateral divorce, and following 1986, lack of access to interim maintenance on separation, may make it harder for Muslim women to leave abusive husbands and increases Muslim women's vulnerability to domestic abuse (Gangoli, 2007).

Debates on personal laws have been mediated through demands for a Uniform Code Bill (UCC). Opponents to the Hindu Code Bill in the 1950s claimed that rather than separate personal laws, there should be a uniform civil code (UCC), and until that was done, Hindu laws should not be tampered with (Singh 1993, 187-188), therefore using the demand for a UCC as a way to postpone reforms within Hindu laws. This has continued to date – the process of making uniform the civil code becomes projected not as an issue of women's rights but to serve national interests (Sunder Rajan 2003; Mishra, 2014).

The UCC debate has been renewed under the current BJP regime, and the rhetoric has shifted, with the BJP manifesto for the 2014 elections promising both gender equality and national integration through a UCC:

BJP believes that there cannot be gender equality till such time India adopts a uniform civil code, which protects the rights of all women, and the BJP reiterates its stand to draft a uniform civil code, drawing upon the best traditions and harmonizing them with the modern times (BJP Manifesto, 2014).

Similarly, the Indian Prime Minister, Narendra Modi, has suggested that a ban on unilateral triple talaq would bring about justice to Muslim women (The Indian Express, 2017). Some

feminists, however, argue in favour of diversity and internal reform within communities, suggesting that sameness in law does not automatically guarantee gender equality, as is apparent in the case of the criminal code which applies to all yet results in differential access to justice (c.f. Vatuk, 2008; Gangoli, 2007).

While it is clear that personal laws is an issue for gender justice and equality, the links between personal law and GBV needs more rigorous research. To what extent do personal laws perpetuate GBV, or following Galtung, (1975), can they be seen as a form of structural violence? To some extent, inequality in law, for instance Muslim men's rights to polygamy and unilateral divorce in India, place women in a position of inequality and make them more vulnerable to interpersonal violence. Polygamous marriages can, arguably, be seen as a form of state sanctioned domestic abuse as they place women in a position of fear and vulnerability (Aghtaie and Gangoli, 2015). Further, in a communalized situation with a powerful right wing government, policy shifts like the move to ban triple talaq and introduce the UCC seem both an attempt to coopt feminist rhetoric of equality and justice and to draw on neo-imperialist debates on 'rescuing' Muslim women from rapacious and violent Muslim men (c.f. Abu-Lughod, 2013). As Abu-Lughod argues, the current interest internationally on the plight of Muslim women has uncomfortable historical resonances with colonial rescuing of Indian women from Sati (widow immolation) and what Spivak has famously called 'white men saving brown women from brown men' (Spivak cited in Abu-Lughod, 2013: 33). In the wider context of lack of concern for Muslim women, manifested in the failure of the Indian State to prosecute the perpetrators of sexual violence against Muslim women in the Gujarat riots, and complete disinterest in welfare for Muslim women through greater access to education and housing, the support for a UCC and the ban on the triple talaq appears disingenuous.

Little academic research exists exploring links between personal laws and GBV. As domestic and sexual violence are governed by criminal law, these are equally applicable to women from all

communities. However, there is some evidence that Muslim women who approach generic women's organisations for support in domestic violence cases have experienced alienation while narrating their experiences of violence. Most progressive, feminist women's groups are controlled by upper caste Hindu women, creating a context where Hindu idioms, language and rhetoric are universalised as Indian within the feminist movement (Solanki, 2011). In such situations, minority women have complained of feeling isolated within the movement (see Gangoli, 2007). While the link between polygamy and domestic violence is neither obvious, nor automatic, and polygamy is known to be more prevalent among Hindus than Muslims (Agnes 1995, 3238- 3242), the apathy towards women suffering from domestic violence is couched in communal terms, justifying inaction on the part of organisations and professionals.

#### *The call to Sharia Law in the UK*

The last 10 years has seen an increasing demand for the consideration of Sharia law in the UK. Sharia family law covers issues such as marriage, divorce and custody of children, dowry and inheritance (Bano, 2010). Feminists argue that the spiritual Islamic tenet of social equality is not reflected in Muslim family law which disadvantages Muslim women and upholds male privilege (Ahmed, 1992; Mernissi, 1992). A key example of this is in matters of divorce where women have to go to great lengths to obtain a divorce compared to men. This is particularly problematic in cases involving domestic abuse, forced marriage and custody of children (Patel and Siddiqui, 2010). Regardless of such concerns, in 2007 the Muslim Arbitration Tribunal (MAT) was set up for alternative dispute resolution and it argues for the legitimacy of religious, personal law to co-exist alongside civil law. MAT's arbitration of family disputes also permits determinations to be enforced under the Arbitration Act 1996 in cases where both parties have agreed to be bound by the outcome. Patel and Siddiqui (ibid) argue that the cutbacks in legal aid and the preferred options of mediation and arbitration is a useful shortcut for cash strapped

governments and leads to a 'shariafication by stealth' (Patel, 2014). Patel (*ibid*) argues that leaders of Muslim communities are advocating for: i) religious personal laws to be codified within the secular legal system and ii) the development of a parallel legal system. Both of these developments are seen as eroding the human rights of Muslim women who might be better served by existing English legislation, however imperfect. A contrary perspective is put forward by others (e.g. Bano, 2010) who argue that Muslim women may prefer to approach religious organisations such as MAT since this protects their rights to religious freedom. However, it is difficult to ascertain whether or not this is an autonomous choice or one that is born out of necessity. For example, in a study of domestic violence in minoritised communities in Manchester, UK, it was found that some Muslim women who already had a civil divorce were struggling to get their former husbands to grant them an Islamic divorce (Batsleer et al, 2002). For women with a strong religious identification, this posed a problem as without the religious divorce, they reported that they did not feel truly divorced and community members may also be unlikely to recognise a civil divorce and may exert pressure on the woman to reconcile (*ibid*). This refusal to grant a divorce can also be interpreted as a form of emotional abuse to maintain power and control over the woman.

MAT pride themselves on taking a progressive lead in combatting forced marriages, yet their process runs counter to the Government's multi agency guidance of strictly no communication with the victim's family (Cabinet Office, 2014). In its document *Liberation from Forced Marriage*, MAT states 'where appropriate the Judges may call upon senior members of the community close to the British spouse to visit his/her family in the UK and to allude them of the legal ramifications of participating or being complicit in a coerced or forced marriage' (p.16). MAT also takes witness statement from family members. Such an approach fails to recognise that approaching the family might well increase the risk for the victim and close off

avenues of help. MAT also claims to assess the vulnerability of the victim and the risk to the victim but the process for both is not identified. Based on their deliberations, the MAT provides a judgement on whether the marriage is coerced. This judgement can then be used as part of the documentation for spousal visas if the marriage is not judged to be forced. The central premise of believing the victim is jeopardized by MAT's approach despite protestations that the victim is at the centre of their considerations. In particular, the involvement of family members is highly problematic given the unequal gender and age related dynamics of families.

This example highlights the difficulties of personal, religious laws as they relegate family matters (including domestic violence and forced marriage) to the private domain and assert that issues such as GBV are best resolved within the Muslim community. Feminist struggles to shift GBV from the private to the public sphere are severely compromised by this approach. In the UK, the Law Society, presumably in the interests of religious and cultural sensitivity, has organised training to facilitate 'sharia compliance', notably in the inheritance field, but also in family work. This coupling between the personal, religious law and the legal profession is being challenged by 'One Law for all' which campaigns for the preservation of secular law as the only basis for ensuring women's human rights are upheld. As Patel (2013:56) argues:

...the question that remains unanswered is why despite evidence of discrimination and denial of rights especially for women, there is such widespread acceptance that family law can be culturally specific rather than subject to universal human rights norms.

The tensions between secularism, faith and gender and how it is played out in law is therefore of central concern both in the UK and in India. The momentum towards a UCC in India has historically been driven more by a sense of nationalism rather than gender equality, though this

has shifted in recent years to include stated concerns for ‘suffering’ Muslim women. In contrast, in the UK, having ‘one law for all’ has always been seen as the only way to protect Muslim women’s (and other minoritised women’s) rights.

## **Conclusions**

We have examined how the minoritised status of Muslim communities shapes Muslim women’s experiences of and responses to GBV in two contexts, India and the UK. Muslim communities in both contexts occupy marginal spaces and are negatively constructed in popular, political and policy discourse, as ‘anti-national’, as misogynist, and as breeding radicalisation and terrorism. Muslim women experience GBV within this broader context of marginality, which we argue is critical to understanding the contradictions and dilemmas they face in seeking protection from violence. Demands for their loyalty within communities subjected to increased scrutiny by the state are likely to constrain women’s options and limit the actions they can take. This serves to silence women, and to lead them to seek solutions internally within their communities, an approach that is further bolstered by the use of personal laws in dealing with such matters. Whilst personal laws, and the increasing call to sharia law in the UK, may appear to promote religious freedom, they also serve to undermine women’s human rights and increase the risk of GBV for Muslim women by relegating family matters to the private domain.

Despite similarities between both contexts, there are also important differences. It is likely that the availability of support services for GBV present vital avenues for women to access external support. It is evident from the foregoing that women in India have few options in cases of domestic violence, due to paucity of welfare provisions, and Muslim women’s access to the services is negatively impacted by communal attitudes among agencies and professionals. In

the UK, while measures under austerity have drastically reduced specialist GBV services for minority women, and racism continues to mark responses from agencies, Muslim women do have some avenues for support partly because of the hyper-visibility of issues such as forced marriage and HBV. We believe that debates around communalism, radicalization and racism are often separated from debates around gender based violence, both in India and the UK, particularly in policy terms. When states express concern for minority women – whether in the context of forced marriage in the UK, or the uniform civil code and these are expressed in the form of policy and legal shifts, such as the legislation on forced marriage in the UK, and the legal challenges to unilateral divorce in India – these moves can be construed as ‘othering’ gender based violence in minoritised communities, rather than understanding it within broader structural contexts of discrimination, and of the UK and Indian States claiming to be on the side of justice for Muslim women. Otherwise, laws on forced marriage in the UK or proposals to introduce the uniform civil code in India may pretend to be based on the aim to protect Muslim women, but may indeed further marginalise them by refusing to consider their oppression at the intersections of identity and structure. Therefore, our central argument remains that understanding and responding to gender based violence in Muslim communities in India and Britain both at an intellectual and policy level necessitates an exploration of the cultural and structural context of Muslim communities in both countries, and its impact on Muslim women.



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<sup>i</sup> In the Indian context, communalism is defined as 'that peculiarly destructive Indian expression of religion in politics which emphasizes the religious identity of social groups and requires political society to be organised as a confederation of religious communities.' Krishna, 1971: 393. Historians such as Chandra (1984) suggest that communalism was a byproduct of anti-colonial nationalism in India before independence, and post partition, became further entrenched as a form of nationalist organizing by Hindu fundamentalists.